

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 420 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 5-28-2-6 IS ADDED TO THE INDIANA CODE
4 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2009]: **Sec. 6. For purposes of IC 5-28-17, "small business"**
6 **means a business entity that satisfies the following requirements:**
7 **(1) On at least fifty percent (50%) of the working days of the**
8 **business entity occurring during the preceding calendar year,**
9 **the business entity employed at least two (2) but not more**
10 **than one hundred (100) employees.**
11 **(2) The majority of the employees of the business entity work**
12 **in Indiana.**
13 SECTION 2. IC 5-28-5-6.5 IS ADDED TO THE INDIANA CODE
14 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2009]: **Sec. 6.5. The board, in consultation with the office of**
16 **energy and defense development, shall establish the office of small**
17 **business energy advancement to carry out the corporation's duties**
18 **under IC 5-28-17. The office of energy and defense development**
19 **shall provide staff support to the office of small business energy**
20 **advancement.**
21 SECTION 3. IC 5-28-17-1, AS ADDED BY P.L.4-2005, SECTION
22 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
23 2009]: **Sec. 1. (a) The corporation shall do the following to carry out**
24 **this chapter:**

(1) Contribute to the strengthening of the economy of Indiana by encouraging the organization and development of new business enterprises, including technologically oriented enterprises.

(2) Submit an annual report to the governor and to the general assembly not later than November 1 of each year. The annual report must:

(A) include detailed information on the structure, operation, and financial status of the corporation; and

(B) be in an electronic format under IC 5-14-6.

The board shall conduct an annual public hearing to receive comment from interested parties regarding the annual report, and notice of the hearing shall be given at least fourteen (14) days before the hearing in accordance with IC 5-14-1.5-5(b).

(3) Approve and administer loans from the microenterprise partnership program fund established by IC 5-28-18.

(4) Conduct activities for nontraditional entrepreneurs under IC 5-28-18.

(5) Establish and administer the small and minority business financial assistance program under IC 5-28-20.

(6) Establish and administer the microenterprise partnership program under IC 5-28-19.

(7) Assist small businesses in obtaining state and federal energy tax incentives.

(8) Establish a statewide network of public, private, and educational resources to inform small businesses of the state and federal programs under which they may obtain financial assistance or realize reduced costs.

(b) The corporation may do the following to carry out this chapter:

(1) Receive money from any source, enter into contracts, and expend money for any activities appropriate to its purpose.

(2) Do all other things necessary or incidental to carrying out the corporation's functions under this chapter.

(3) Establish programs to identify entrepreneurs with marketable ideas and to support the organization and development of new business enterprises, including technologically oriented enterprises.

(4) Conduct conferences and seminars to provide entrepreneurs with access to individuals and organizations with specialized expertise.

(5) Establish a statewide network of public, private, and educational resources to assist the organization and development of new enterprises.

(6) Operate a small business assistance center to provide small businesses, including minority owned businesses and businesses owned by women, with access to managerial and technical expertise and to provide assistance in resolving problems

encountered by small businesses.

(7) Cooperate with public and private entities, including the Indiana Small Business Development Center Network and the federal government marketing program, in exercising the powers listed in this subsection.

(8) Establish and administer the small and minority business financial assistance program under IC 5-28-20.

(9) Approve and administer loans from the microenterprise partnership program fund established by IC 5-28-18.

(10) Coordinate state funded programs that assist the organization and development of new enterprises.

(11) Consult and cooperate with the office of energy and defense development in the establishment of the office of small business energy advancement under IC 5-28-5-6.5.

SECTION 4. IC 5-28-17-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3. The office of small business energy advancement established under IC 5-28-5-6.5 shall provide free access to the office's services through:**

(1) a toll free telephone number; and

(2) an Internet web page maintained on the web site of the office of energy and defense development.

SECTION 6. IC 6-3.1-33 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]:

Chapter 33. Renewable Energy Technology Manufacturer Tax Credit

Sec. 1. This chapter applies only to taxable years beginning after December 31, 2010.

Sec. 2. As used in this chapter, "corporation" refers to the Indiana economic development corporation established by IC 5-28-3-1.

Sec. 3. As used in this chapter, "director" has the meaning set forth in IC 6-3.1-13-3.

Sec. 4. As used in this chapter, "highly compensated employee" has the meaning set forth in Section 414(q) of the Internal Revenue Code.

Sec. 5. As used in this chapter, "new employee" has the meaning set forth in IC 6-3.1-13-6.

Sec. 6. As used in this chapter, "qualified investment" means the amount of a taxpayer's expenditures in Indiana that are reasonable and necessary for the manufacture or assembly of renewable energy technology.

Sec. 7. As used in this chapter, "renewable energy technology" means the following:

(1) Solar panels that convert sunlight into electricity.

(2) Solar technologies that use optical techniques to generate

heat to power turbines or heat engines for the production of electricity.

(3) Wind turbines that convert wind energy into electricity.

(4) Electrochemical devices, known as fuel cells, that combine hydrogen and oxygen to produce electricity.

(5) Anaerobic digestion systems in which organic waste is composted to produce gases that are burned as fuel to produce electricity.

(6) Geothermal energy systems, including geothermal systems for:

(A) the generation of electricity; or

(B) heating and cooling.

Sec. 8. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

(2) IC 6-5.5 (the financial institutions tax); and

(3) IC 27-1-18-2 (the insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 9. As used in this chapter, "taxpayer" means an individual, a corporation, a partnership, or another entity that has state tax liability.

Sec. 10. The corporation may make credit awards under this chapter to:

(1) foster job creation and higher wages;

(2) reduce dependency upon energy sources imported into the United States; and

(3) reduce air pollution;

as the result of the manufacture or assembly of renewable energy technology in Indiana.

Sec. 11. Each taxable year, a taxpayer that:

(1) is awarded a tax credit under this chapter by the corporation; and

(2) complies with the conditions set forth in this chapter and the agreement entered into by the corporation and the taxpayer under this chapter;

is entitled to a credit against the taxpayer's state tax liability for the taxable year.

Sec. 12. The amount of the tax credit provided by this chapter for a taxable year is an amount equal to:

(1) a percentage determined by the corporation, not to exceed fifteen percent (15%); multiplied by

(2) the amount of the qualified investment made by the taxpayer in Indiana during the taxable year.

Sec. 13. (a) A taxpayer may carry forward an unused credit for the number of years determined by the corporation, not to exceed

1 nine (9) consecutive taxable years, beginning with the taxable year
 2 immediately following the taxable year in which the taxpayer
 3 makes the qualified investment.

4 (b) The amount that a taxpayer may carry forward to a
 5 particular taxable year under this section equals the unused part
 6 of a credit allowed under this chapter.

7 (c) A taxpayer may:

8 (1) claim a tax credit under this chapter for a qualified
 9 investment; and

10 (2) carry forward a remainder for one (1) or more different
 11 qualified investments;
 12 in the same taxable year.

13 (d) The total amount of each tax credit claimed under this
 14 chapter may not exceed fifteen percent (15%) of the qualified
 15 investment for which the tax credit is claimed.

16 (e) A taxpayer may not carry back an unused credit provided by
 17 this chapter to a taxable year before the taxable year in which the
 18 taxpayer makes the qualified investment. A taxpayer may not
 19 claim a refund for an unused credit provided by this chapter.

20 Sec. 14. A person that proposes a project to manufacture or
 21 assemble renewable energy technology that would create new jobs,
 22 increase wage levels, or involve substantial capital investment in
 23 Indiana may apply to the corporation before the taxpayer makes
 24 the qualified investment to enter into an agreement for a tax credit
 25 under this chapter. The corporation shall prescribe the form of the
 26 application.

27 Sec. 15. After receipt of an application, the corporation may
 28 enter into an agreement with the applicant for a credit under this
 29 chapter if the corporation determines that all the following
 30 conditions exist:

31 (1) The applicant's project will raise the total earnings of
 32 employees of the applicant in Indiana.

33 (2) The applicant's project is economically sound and will
 34 benefit the people of Indiana by increasing opportunities for
 35 employment and strengthening the economy of Indiana.

36 (3) The manufacture or assembly of renewable energy
 37 technology by the applicant will reduce air pollution.

38 (4) The manufacture or assembly of renewable energy
 39 technology by the applicant will reduce dependence by the
 40 United States on foreign energy sources.

41 (5) Receiving the tax credit is a major factor in the applicant's
 42 decision to go forward with the project.

43 (6) Awarding the tax credit will result in an overall positive
 44 fiscal impact to the state, as certified by the budget agency
 45 using the best available data.

46 (7) The credit is not prohibited by section 16 of this chapter.

47 (8) The average wage that will be paid by the taxpayer to the

applicant's employees (excluding highly compensated employees) at the location after the credit is given will be at least equal to one hundred fifty percent (150%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

Sec. 16. A person is not entitled to claim the credit provided by this chapter for any jobs that the person relocates from one (1) site in Indiana to another site in Indiana. Determinations under this section shall be made by the corporation.

Sec. 17. The corporation shall certify the amount of the qualified investment that is eligible for a credit under this chapter. In determining the credit amount that should be awarded, the corporation shall grant a credit only for the amount of the qualified investment that is directly related to expanding:

- (1) the workforce in Indiana; or
- (2) the capital investment in Indiana.

Sec. 18. The corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all the following:

- (1) A detailed description of the project that is the subject of the agreement.
- (2) The first taxable year for which the credit may be claimed.
- (3) The amount of the taxpayer's state tax liability for each tax in the taxable year of the taxpayer that immediately preceded the first taxable year in which the credit may be claimed.
- (4) The maximum tax credit amount that will be allowed for each taxable year.
- (5) A requirement that the taxpayer shall maintain operations at the project location for at least ten (10) years during the term that the tax credit is available.
- (6) A specific method for determining the number of new employees employed during a taxable year who are performing jobs not previously performed by an employee.
- (7) A requirement that the taxpayer shall annually report to the corporation the number of new employees who are performing jobs not previously performed by an employee, the average wage of the new employees, the average wage of all employees at the location where the qualified investment is made, and any other information the director needs to perform the director's duties under this chapter.
- (8) A requirement that the director is authorized to verify with the appropriate state agencies the amounts reported under subdivision (7), and that after doing so shall issue a certificate to the taxpayer stating that the amounts have been verified.
- (9) A requirement that the taxpayer shall pay an average wage to all its employees other than highly compensated

employees in each taxable year that a tax credit is available that equals at least one hundred fifty percent (150%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

(10) A requirement that the taxpayer will keep the qualified investment property that is the basis for the tax credit in Indiana for at least the lesser of:

(A) the useful life of the qualified investment for federal income tax purposes; or

(B) ten (10) years.

(11) A requirement that the taxpayer will maintain at the location where the qualified investment is made during the term of the tax credit a total payroll that is at least equal to the payroll level that existed before the qualified investment was made.

(12) A requirement that the taxpayer shall provide written notification to the director and the corporation not more than thirty (30) days after the taxpayer makes or receives a proposal that would transfer the taxpayer's state tax liability obligations to a successor taxpayer.

(13) Any other performance conditions that the corporation determines are appropriate.

Sec. 19. A taxpayer claiming a credit under this chapter shall submit to the department of state revenue a copy of the director's certificate of verification under this chapter for the taxable year. However, failure to submit a copy of the certificate does not invalidate a claim for a credit.

Sec. 20. If the director determines that a taxpayer who has received a credit under this chapter is not complying with the requirements of the tax credit agreement or all the provisions of this chapter, the director shall, after giving the taxpayer an opportunity to explain the noncompliance, notify the Indiana economic development corporation and the department of state revenue of the noncompliance and request an assessment. The department of state revenue, with the assistance of the director, shall state the amount of the assessment, which may not exceed the sum of any previously allowed credits under this chapter. After receiving the notice, the department of state revenue shall make an assessment against the taxpayer under IC 6-8.1.

Sec. 21. On or before March 31 each year, the director shall submit a report to the corporation on the tax credit program established by this chapter. The report must include information on the number of agreements that were entered into under this chapter during the preceding calendar year, a description of the project that is the subject of each agreement, an update on the status of projects under agreements entered into before the preceding calendar year, and the sum of the credits awarded under this chapter. A copy of the report shall be transmitted in an

1 electronic format under IC 5-14-6 to the executive director of the
2 legislative services agency for distribution to the members of the
3 general assembly.

4 **Sec. 22.** On a biennial basis, the corporation shall provide for an
5 evaluation of the tax credit program established by this chapter.
6 The evaluation must include an assessment of the effectiveness of
7 the program in creating new jobs and increasing wages in Indiana
8 and of the revenue impact of the program and may include a
9 review of the practices and experiences of other states with similar
10 programs. The director shall submit a report on the evaluation to
11 the governor, the president pro tempore of the senate, and the
12 speaker of the house of representatives after June 30 and before
13 November 1 in each odd-numbered year. The report provided to
14 the president pro tempore of the senate and the speaker of the
15 house of representatives must be in an electronic format under
16 IC 5-14-6.

17 **Sec. 23.** Notwithstanding the other provisions of this chapter,
18 the corporation may not approve a credit for a qualified
19 investment made after December 31, 2012. However, this section
20 may not be construed to prevent a taxpayer from carrying an
21 unused tax credit attributable to a qualified investment made
22 before January 1, 2013, forward to a taxable year beginning after
23 December 31, 2012, in the manner provided by section 13 of this
24 chapter.

25 SECTION 7. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE
26 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
27 JANUARY 1, 2010]:

28 **Chapter 34. Business Renewable Energy Investment Tax Credit**

29 **Sec. 1.** This chapter applies only to taxable years beginning after
30 December 31, 2010.

31 **Sec. 2.** As used in this chapter, "business entity" means:

- 32 (1) an individual engaged in a trade or business;
- 33 (2) a partnership;
- 34 (3) a limited liability company;
- 35 (4) a limited liability partnership; or
- 36 (5) a corporation.

37 **Sec. 3.** As used in this chapter, "IEDC" refers to the Indiana
38 economic development corporation established by IC 5-28-3-1.

39 **Sec. 4.** As used in this chapter, "pass through entity" means:

- 40 (1) a corporation that is exempt from the adjusted gross
41 income tax under IC 6-3-2-2.8(2);
- 42 (2) a partnership;
- 43 (3) a trust;
- 44 (4) a limited liability company; or
- 45 (5) a limited liability partnership.

46 **Sec. 5.** As used in this chapter, "qualified capital investment"
47 means an expenditure for depreciable property that conforms to

the terms and conditions of a credit award by the IEDC under this chapter. The term does not include an expenditure for inventory.

Sec. 6. As used in this chapter, "renewable or alternative energy technology" means the following:

- (1) Solar panels that convert sunlight into electricity.
- (2) Solar technologies that use optical techniques to generate heat to power turbines or heat engines for the production of electricity.
- (3) Wind turbines that convert wind energy into electricity.
- (4) Electrochemical devices, known as fuel cells, that combine hydrogen and oxygen to produce electricity.
- (5) Anaerobic digestion systems in which organic waste is composted to produce gases that are burned as fuel to produce electricity.
- (6) Geothermal energy systems, including geothermal systems for:
 - (A) the generation of electricity; or
 - (B) heating and cooling.
- (7) Commercial building technologies that contribute to certification under any of the following standards or rating systems:
 - (A) Green Globes.
 - (B) Leadership in Energy and Environmental Design (LEED).
 - (C) An American National Standards Institute (ANSI) green building standard.

Sec. 7. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 27-1-18-2 (the insurance premiums tax); and
- (3) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 8. Each taxable year beginning after December 31, 2010, a business entity that meets the terms of a credit award agreement entered into under section 14 of this chapter is entitled to a credit against the business entity's state tax liability for amounts that the business entity expends during the taxable year for a qualified capital investment in renewable or alternative energy technology. The amount of the credit is:

- (1) the percentage awarded to the business entity by the IEDC, not to exceed ten percent (10%); multiplied by
- (2) the amount of the business entity's qualified capital investment in renewable or alternative energy technology for the taxable year.

Sec. 9. (a) A taxpayer may carry forward an unused credit

provided by this chapter for the number of years determined by the IEDC, not to exceed nine (9) consecutive taxable years, beginning with the taxable year after the taxable year in which the taxpayer makes the qualified capital investment.

(b) The amount that a taxpayer may carry forward to a particular taxable year under this section equals the unused part of a credit allowed under this chapter.

(c) A taxpayer may:

(1) claim a tax credit under this chapter for a qualified capital investment; and

(2) carry forward a remainder for one (1) or more different qualified capital investments;

in the same taxable year.

(d) A taxpayer may not carry back an unused credit provided by this chapter to a taxable year before the taxable year in which the taxpayer makes the qualified capital investment. A taxpayer may not claim a refund for an unused credit provided by this chapter.

Sec. 10. If a pass through entity does not have state tax liability against which the tax credit provided by this chapter may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

(1) the amount of the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

Sec. 11. The IEDC may approve credit awards under this chapter to encourage business entities to make capital investments in renewable or alternative energy technology in Indiana.

Sec. 12. A business entity may apply to the IEDC for a credit award under this chapter for a proposed capital investment in renewable or alternative energy technology in Indiana. The IEDC shall prescribe the form of the application.

Sec. 13. (a) The IEDC may not make a credit award under this chapter unless the proposed capital investment in renewable or alternative energy technology conforms with the following requirements:

(1) The proposed capital investment is located in Indiana.

(2) The proposed capital investment consists of depreciable property that implements a renewable or alternative energy technology.

(b) The IEDC may make a credit award under this chapter only for proposed capital investments in renewable or alternative energy technology. The IEDC may not make credit awards under this chapter for investments in renewable or alternative energy technology that are accomplished before the date on which the business entity's application is submitted to the IEDC. If an

investment in renewable or alternative energy technology is partially completed before the date on which the business entity's application is submitted to the IEDC, the IEDC may make a credit award for the part of the investment that occurs on or after the date on which the business entity's application is submitted to the IEDC.

Sec. 14. (a) After receipt of an application, the IEDC shall review the application to determine whether the requirements of section 13 of this chapter are met. If the IEDC determines that the proposed capital investment in renewable or alternative energy technology is not eligible for a credit award, the IEDC promptly shall issue a letter notifying the applicant that the application is denied.

(b) If the IEDC determines that a proposed capital investment in renewable or alternative energy technology is eligible for a credit award, the IEDC promptly shall prepare a credit award agreement that specifies the terms of the credit award. The credit award agreement must contain the following provisions:

- (1) An award of the credit percentage to be applied under section 8 of this chapter.
- (2) A provision that requires the applicant business entity to remain for ten (10) years at the location where the renewable or alternative energy technology is installed.
- (3) Any other reasonable provision that the IEDC determines is advisable.

After the IEDC has prepared the credit award agreement, the IEDC promptly shall send a letter of notification along with the credit award agreement to the applicant business entity.

(c) A business entity is not eligible for the credit provided by this chapter unless the business entity enters into a credit award agreement with the IEDC.

Sec. 15. The department may require a taxpayer claiming a credit under this chapter to submit supporting documentation with the taxpayer's return.

Sec. 16. If the IEDC suspects that a taxpayer who has received a credit under this chapter is not complying with the requirements of the taxpayer's credit award agreement or this chapter, the IEDC shall give the taxpayer an opportunity to explain the noncompliance. If the IEDC determines that the taxpayer is not complying with the requirements of the credit award agreement or this chapter, the IEDC shall notify the department of the noncompliance and request an assessment. The department, with the assistance of the IEDC, shall determine the amount of the assessment, which may not exceed the sum of any previously allowed credits under this chapter, and shall make an assessment against the taxpayer under IC 6-8.1.

Sec. 17. Notwithstanding the other provisions of this chapter,

the IEDC may not approve an application for a credit award under this chapter after December 31, 2012. However, this section does not prevent a taxpayer from carrying forward an unused tax credit attributable to a qualified capital investment made before January 1, 2013, to a taxable year beginning after December 31, 2012, in the manner provided by section 9 of this chapter.

SECTION 8. IC 8-1-2-23.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 23.1. (a) This section applies to a public utility that complies with the schedule set forth in IC 8-1-37-5(b).**

(b) For purposes of section 23 of this chapter, the construction, addition, extension, or improvement of a public utility's plant or equipment to provide electric or gas service to a customer that produces biodiesel, ethanol, or any other biofuel is in fact used and useful in the public service.

(c) This subsection applies to a public utility's general rate proceeding that immediately follows the public utility's investment in a construction, an addition, an extension, or an improvement described in subsection (b). A public utility may accrue for recovery in the rate proceeding depreciation and a return, not to exceed a total of fifty million dollars (\$50,000,000), on the public utility's investment at the rate of return authorized by the commission in the public utility's general rate proceeding immediately preceding the investment. The accrual of a return by a public utility under this subsection:

(1) begins on the date the public utility initially records the investment in the public utility's books or records, as determined by the commission; and

(2) ends on the earlier of the following dates:

(A) The date on which the public utility accrues the full return determined under this subsection.

(B) The date rates are placed in effect after a general rate proceeding that recognizes an investment by a public utility in the public utility's rate base.

(d) Notwithstanding subsection (c), the commission shall revoke a cost recovery approved under this chapter for an electricity supplier that the commission determines has:

(1) elected to; and

(2) failed to;

comply with the schedule set forth in IC 8-1-37-5(b).

(e) This section expires December 31, 2020, unless reauthorized by the general assembly before December 31, 2020. However, a return accrued under this section before January 1, 2021, expires on the appropriate date determined under subsection (c)(2) even if the expiration date occurs after December 31, 2020.

SECTION 9. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON

PASSAGE]:

Chapter 8.4. Electric Line Facilities Projects

Sec. 1. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

Sec. 2. As used in this chapter, "electric line facilities" means the following:

- (1) Overhead or underground electric transmission lines.
- (2) Overhead or underground electric distribution lines.
- (3) Electric substations.

Sec. 3. As used in this chapter, "electric line facilities project" means an addition to or the construction, operation, maintenance, reconstruction, relocation, upgrading, or removal of electric line facilities.

Sec. 4. As used in this chapter, "electricity supplier" means a public utility that furnishes retail electric service to the public.

Sec. 5. As used in this chapter, "public utility" has the meaning set forth in IC 8-1-2-1.

Sec. 6. As used in this chapter, "regional transmission organization" refers to the regional transmission organization approved by the Federal Energy Regulatory Commission for the control area in which an electricity supplier operates electric line facilities.

Sec. 7. As used in this chapter, "renewable energy resources" has the meaning set forth in IC 8-1-37-4.

Sec. 8. This chapter applies to an electricity supplier that complies with the schedule set forth in IC 8-1-37-5(b).

Sec. 9. (a) The commission shall encourage electric line facilities projects by creating the following financial incentives for electric line facilities that are reasonable and necessary:

- (1) The timely recovery of costs, by means of a periodic rate adjustment mechanism, incurred by an electricity supplier in connection with an electric line facilities project that transmits or distributes electricity generated from renewable energy resources.
- (2) The timely recovery of costs, by means of a periodic rate adjustment mechanism, incurred by an electricity supplier taking service under a tariff of, or being assessed costs by the:
 - (A) regional transmission organization; or
 - (B) Federal Energy Regulatory Commission.

(b) The commission shall determine a reasonable schedule under which an electricity supplier may recover costs under this section. In making a determination under this subsection, the commission shall consider the impact of the cost recovery on ratepayers of the electricity supplier.

Sec. 10. (a) Subject to subsection (h), an electricity supplier must submit an application to the commission for approval of an electric line facilities project for which the electricity supplier seeks to

1 receive a financial incentive created under section 9 of this chapter.

2 (b) The commission shall prescribe the form for an application
3 submitted under this section.

4 (c) Upon receipt of an application under subsection (a), the
5 commission shall review the application for completeness. The
6 commission may request additional information from an applicant
7 as needed. The commission may not review an application
8 submitted after December 31, 2020, unless authorized to do so by
9 the general assembly before January 1, 2021.

10 (d) The commission, after notice and hearing, shall issue a
11 determination of an electric line facilities project's eligibility for
12 the financial incentives described in section 9 of this chapter not
13 later than one hundred eighty (180) days after the date of the
14 application. A determination under this subsection must include a
15 finding that the applicant electricity supplier is in compliance with
16 the schedule set forth in IC 8-1-37-5(b).

17 (e) Subject to subsections (g) and (h), the commission shall
18 approve an application by an electricity supplier for an electric line
19 facilities project that is reasonable and necessary. An electric line
20 facilities project is presumed to be reasonable and necessary if the
21 electric line facilities project:

22 (1) is consistent with, or part of, a plan developed by the:

23 (A) regional transmission organization; or

24 (B) Federal Energy Regulatory Commission; or

25 (2) transmits or distributes electricity generated from
26 renewable energy resources.

27 However, an electricity supplier may seek approval from the
28 commission at the electricity supplier's next general rate
29 proceeding to include in the electricity supplier's basic rates the
30 recoverable costs sought in an application approved under this
31 subsection.

32 (f) This section does not relieve an electricity supplier of the
33 duty to obtain any certificate required under IC 8-1-8.5 or
34 IC 8-1-8.7.

35 (g) The commission shall not approve a financial incentive for
36 that part of an electric line facilities project that exceeds the lesser
37 of:

38 (1) seven percent (7%) of the electricity supplier's rate base
39 approved by the commission in the electricity supplier's most
40 recent general rate proceeding; or

41 (2) one hundred fifty million dollars (\$150,000,000).

42 (h) The commission may not approve a financial incentive under
43 section 9 of this chapter for a particular electricity supplier if the
44 commission has approved a financial incentive under section 9 of
45 this chapter in the preceding twelve (12) months for that electricity
46 supplier, unless the commission determines that approving a
47 particular financial incentive for an electricity supplier on a more

timely basis will benefit the electricity supplier's ratepayers.

(i) **A financial incentive that the commission approves before January 1, 2021, or that an electricity supplier applies for before January 1, 2021, and that is subsequently approved, expires on the earlier of the following dates:**

(1) **The date on which the electricity supplier accrues the full recovery amount authorized by the commission.**

(2) **The date specified by the commission in its approval of the financial incentive.**

Sec. 11. The commission shall revoke all financial incentives approved under this chapter for an electricity supplier that the commission determines has:

(1) **elected to; and**

(2) **failed to;**

comply with the schedule set forth in IC 8-1-37-5(b).

SECTION 10. IC 8-1-8.8-2, AS AMENDED BY P.L.175-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. As used in this chapter, "clean coal and energy projects" means any of the following:

(1) Any of the following projects:

(A) Projects at new energy production or generating facilities that employ the use of clean coal technology and that produce energy, including substitute natural gas, primarily from coal, or gases derived from coal, from the geological formation known as the Illinois Basin.

(B) Projects to provide advanced technologies that reduce regulated air emissions from existing energy production or generating plants that are fueled primarily by coal or gases from coal from the geological formation known as the Illinois Basin, such as flue gas desulfurization and selective catalytic reduction equipment.

(C) Projects to provide electric transmission facilities to serve a new energy production or generating facility **or a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility.**

(D) Projects that produce substitute natural gas from Indiana coal by construction and operation of a coal gasification facility.

(E) **Projects or potential projects that employ the use of low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating technologies to produce electricity.**

(2) Projects to develop alternative energy sources, including renewable energy projects ~~and~~ **or** coal gasification facilities.

(3) The purchase of fuels **or energy** produced by a coal gasification facility **or by a low carbon dioxide emitting or**

noncarbon dioxide emitting energy production or generating facility.

(4) Projects described in subdivisions (1) through ~~(3)~~ (2) that use coal bed methane.

SECTION 11. IC 8-1-8.8-6, AS AMENDED BY P.L.175-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. As used in this chapter, "eligible business" means an energy utility (as defined in IC 8-1-2.5-2) or owner of a coal gasification facility that:

(1) proposes to construct or repower a new energy production or generating facility;

(2) proposes to construct or repower a project described in section 2(1) or 2(2) of this chapter;

(3) undertakes a project to develop alternative energy sources, including renewable energy projects or **coal gasification facilities; or**

(4) purchases fuels **or energy** produced by a coal gasification facility **or by a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility.**

SECTION 12. IC 8-1-8.8-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7.5. (a) As used in this chapter, "low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility" means an energy production or generation facility, including transmission lines and equipment described in subsection (b), that is:

(1) installed or constructed at the site of a facility that supplies electricity to Indiana retail customers as of July 1, 2009; and

(2) intended to produce:

(A) no carbon dioxide as a byproduct of the production or generation of energy; or

(B) less carbon dioxide per megawatt hour of electricity generated than is produced per megawatt hour of electricity generated by a coal fired or other fossil fuel based energy production or generating facility.

(b) The term includes the transmission lines and other associated equipment employed specifically to serve a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility.

SECTION 13. IC 8-1-8.8-8, AS AMENDED BY P.L.175-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) As used in this chapter, "new energy production or generating facility" refers to a generation or coal gasification facility that satisfies all of the following:

(1) The facility produces energy primarily from coal or gases from coal from the geological formation known as the Illinois Basin.

(2) The facility is a:

(A) newly constructed or newly repowered energy ~~generation~~ plant; or

(B) newly constructed ~~generation~~ capacity expansion at an existing ~~facility~~; **plant**;

dedicated primarily to serving Indiana retail customers.

(3) The repowering, construction, or expansion of the facility was begun by an Indiana utility after July 1, 2002.

(4) Except for a facility that is a clean coal and energy project under section 2(2) of this chapter, the facility has an aggregate rated electric generating capacity of at least one hundred (100) megawatts for all units at one (1) site or a generating capacity of at least four hundred thousand (400,000) pounds per hour of steam.

(b) The term includes the transmission lines, gas transportation facilities, and associated equipment employed specifically to serve a new energy generating or coal gasification facility.

SECTION 14. IC 8-1-8.8-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8.5. As used in this chapter, "qualified utility system expenses" means any preconstruction costs associated with the study, analysis, or development of a:**

(1) new energy production or generating facility; or

(2) new low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility;

including siting, design, licensing, and permitting costs.

SECTION 15. IC 8-1-8.8-9, AS AMENDED BY P.L.175-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9. As used in this chapter, "qualified utility system property" means any:**

(1) new energy ~~production or~~ generating or coal gasification facility; or

(2) new low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility;

used, or to be used, in whole or in part, by an energy utility to provide retail energy service (as defined in IC 8-1-2.5-3) regardless of whether that service is provided under IC 8-1-2.5 or another provision of this article.

SECTION 16. IC 8-1-8.8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11. (a) The commission shall encourage clean coal and energy projects by creating the following financial incentives for clean coal and energy projects, if the projects are found to be reasonable and necessary:**

(1) The timely recovery of costs incurred during construction and operation of projects described in section 2(1) or 2(2) of this chapter.

(2) The authorization of up to three (3) percentage points on the return on shareholder equity that would otherwise be allowed to be earned on projects described in subdivision (1).

(3) Financial incentives for the purchase of fuels **or energy** produced by a coal gasification facility **or by a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility**, including cost recovery and the incentive available under subdivision (2).

(4) Financial incentives for projects to develop alternative energy sources, including renewable energy projects **or coal gasification facilities**.

(5) Other financial incentives the commission considers appropriate.

(b) An eligible business must file an application to the commission for approval of a clean coal and energy project under this section. This chapter does not relieve an eligible business of the duty to obtain any certificate required under IC 8-1-8.5 or IC 8-1-8.7. An eligible business seeking a certificate under IC 8-1-8.5 or IC 8-1-8.7 and this chapter for one (1) project may file a single application for all necessary certificates. If a single application is filed, the commission shall consider all necessary certificates at the same time.

(c) The commission shall promptly review an application filed under this section for completeness. The commission may request additional information the commission considers necessary to aid in its review.

(d) The commission shall, after notice and hearing, issue a determination of a project's eligibility for the financial incentives described in subsection (a) not later than one hundred twenty (120) days after the date of the application, unless the commission finds that the applicant has not cooperated fully in the proceeding.

SECTION 17. IC 8-1-8.8-12, AS AMENDED BY P.L.175-2007, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) The commission shall provide financial incentives to eligible businesses for:

(1) new energy ~~producing and~~ **production or** generating facilities; **and**

(2) **new low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facilities;**

in the form of timely recovery of the costs incurred in connection with the **study, analysis, development, siting, design, licensing, permitting,** construction, repowering, expansion, operation, or maintenance of the facilities.

(b) An eligible business seeking authority to timely recover the costs described in subsection (a) must apply to the commission for approval of a rate adjustment mechanism in the manner determined by the commission.

(c) An application must include the following:

- (1) A schedule for the completion of construction, repowering, or expansion of the ~~new energy generating or coal gasification~~ facility for which rate relief is sought.
- (2) Copies of the most recent integrated resource plan filed with the commission, if applicable.
- (3) The amount of capital investment by the eligible business in the ~~new energy generating or coal gasification~~ facility.
- (4) Other information the commission considers necessary.

(d) The commission shall allow an eligible business to recover:

- (1) the costs associated with qualified utility system property; **and**
- (2) qualified utility system expenses;**

if the eligible business provides substantial documentation that the expected costs ~~associated with qualified utility system property~~ and **expenses and** the schedule for incurring those costs **and expenses** are reasonable and necessary.

(e) The commission shall allow an eligible business to recover the costs associated with the purchase of fuels ~~or energy~~ produced by a coal gasification facility **or by a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility** if the eligible business provides substantial documentation that the costs associated with the purchase are reasonable and necessary.

(f) A retail rate adjustment mechanism proposed by an eligible business under this section may be based on actual or forecasted data. If forecast data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct for any variance between the forecasted costs and the actual costs."

Page 1, delete lines 1 through 17.

Delete pages 2 through 4.

Page 5, delete lines 1 through 19.

Page 5, line 34, delete "IC 8-1-8.2-6" and insert "**IC 8-1-8.4-6**".

Page 5, delete lines 35 through 42, begin a new paragraph and insert:

"Sec. 3. As used in this chapter, "renewable energy credit", or "REC", means one (1) megawatt hour of electricity that is:

- (1) generated from a renewable energy resource described in section 4(a) of this chapter;**
- (2) quantifiable; and**
- (3) possessed by not more than one (1) entity at a time.**

Sec. 4. (a) As used in this chapter, "renewable energy resources" includes the following sources, technologies, and programs for the production or conservation of electricity:

- (1) Methane systems that convert waste products, including animal, food, and plant waste, into electricity or fuel for the production of electricity.**
- (2) Methane recovered from landfills or coal mines.**

1 (3) Wind.

2 (4) Solar photovoltaic cells and panels.

3 (5) Clean coal and energy projects (as defined in IC 8-1-8.8-2),
4 including plant efficiency measures.

5 (6) Dedicated crops grown for energy production.

6 (7) Energy from waste to energy facilities.

7 (8) Noncarbon dioxide emitting or low carbon dioxide
8 emitting electricity generating technologies placed in service
9 after June 30, 2009.

10 (9) Hydropower.

11 (10) Demand side management or energy efficiency programs
12 that:

13 (A) reduce electricity consumption; or

14 (B) implement load management or demand response
15 technologies that shift a customer's electric load from
16 periods of higher demand to periods of lower demand.

17 (11) Combined heat and power systems that:

18 (A) use natural gas or renewable energy resources as
19 feedstock; and

20 (B) achieve at least seventy percent (70%) overall
21 efficiency.

22 (12) Geothermal hot water district heating systems.

23 (13) Electricity generated through net metering that is
24 regulated under rules adopted by the commission or other
25 Indiana law.

26 (14) Energy storage facilities.

27 (15) A renewable energy resource listed in IC 8-1-8.8-10 to the
28 extent the renewable energy resource is not already described
29 in this subsection.

30 (b) Except as provided in subsection (a)(7), the term does not
31 include energy from the incineration, burning, or heating of the
32 following:

33 (1) Garbage.

34 (2) General household, institutional, or commercial waste.

35 (3) Industrial lunchroom or office waste.

36 (4) Landscape waste.

37 (5) Construction or demolition debris.

38 (6) Feedstock that is municipal, food, plant, industrial, or
39 animal waste from outside Indiana.

40 Sec. 5. (a) Each electricity supplier shall supply electricity under
41 a schedule set forth in either subsection (b) or (c).

42 (b) In order to qualify for a financial incentive under
43 IC 8-1-2-23.1 or IC 8-1-8.4-9, an electricity supplier shall supply
44 electricity that is generated from renewable energy resources
45 described in section 4(a) of this chapter to Indiana customers as a
46 percentage of the total electricity supplied by the electricity
47 supplier to Indiana customers during a calendar year as follows:

1 (1) Not later than the calendar year ending December 31,
2 2010, at least three percent (3%).

3 (2) Not later than the calendar year ending December 31,
4 2015, at least six percent (6%).

5 (3) Not later than the calendar year ending December 31,
6 2020, at least ten percent (10%).

7 (4) Not later than the calendar year ending December 31,
8 2025, at least fifteen percent (15%).

9 For purposes of this subsection, electricity is measured in
10 megawatt hours.

11 (c) An electricity supplier that elects not to comply with
12 subsection (b) shall supply electricity that is generated from
13 renewable energy resources described in section 4(a) of this
14 chapter to Indiana customers as a percentage of the total electricity
15 supplied by the electricity supplier to Indiana customers during a
16 calendar year as follows:

17 (1) Not later than the calendar year ending December 31,
18 2010, at least one and five-tenths percent (1.5%).

19 (2) Not later than the calendar year ending December 31,
20 2015, at least four percent (4%).

21 (3) Not later than the calendar year ending December 31,
22 2020, at least seven percent (7%).

23 (4) Not later than the calendar year ending December 31,
24 2025, at least ten percent (10%).

25 For purposes of this subsection, electricity is measured in
26 megawatt hours.

27 (d) An electricity supplier may own or purchase RECs or
28 carbon offset equivalents to comply with subsection (b) or (c), as
29 applicable.

30 (e) An electricity supplier may not use a renewable energy
31 resource described in section 4(a)(5), 4(a)(8), 4(a)(10), or 4(a)(11)
32 of this chapter to generate more than twenty-five percent (25%) of
33 the electricity that the electricity supplier is required to supply
34 under subsection (b) or (c), as applicable.

35 (f) If an electricity supplier exceeds the applicable percentage
36 under subsection (b) or (c) in a compliance year, the electricity
37 supplier may carry forward the amount of electricity that:

38 (1) exceeds the applicable percentage under subsection (a);
39 and

40 (2) is generated from renewable energy resources;
41 to comply with the requirement under subsection (b) or (c) for
42 either or both of the two (2) immediately succeeding compliance
43 years.

44 (g) The commission shall consider the costs incurred by an
45 electricity supplier in complying with subsection (b) or (c), as
46 applicable, as consistent with the requirements of IC 8-1-2-42(d)(1)
47 when ruling on a fuel cost charge requested by the electricity

- 1 **supplier under IC 8-1-2-42(d).".**
- 2 Delete pages 6 through 7.
- 3 Page 8, delete lines 1 through 3.
- 4 Page 8, line 7, delete "IC 8-1-2-23.1(d), IC 8-1-8.2-11, or section
- 5 9(c) of this chapter," and insert **"IC 8-1-2-23.1(d) or IC 8-1-8.4-11,"**.
- 6 Page 8, line 23, delete "shall" and insert **"may"**.
- 7 Page 9, delete lines 15 through 42, begin a new paragraph and
- 8 insert:
- 9 **"Sec. 9. (a) The commission shall allow an electricity supplier**
- 10 **that complies with the schedule set forth in section 5(b) or 5(c) of**
- 11 **this chapter to recover reasonable and necessary costs incurred in:**
- 12 **(1) constructing, operating, or maintaining facilities to comply**
- 13 **with this chapter;**
- 14 **(2) generating electricity from, or purchasing electricity**
- 15 **generated from, a renewable energy resource;**
- 16 **(3) purchasing RECs or carbon offset equivalents; or**
- 17 **(4) complying with federal renewable energy resource**
- 18 **portfolio requirements;**
- 19 **by a periodic rate adjustment mechanism.**
- 20 **(b) The commission shall revoke a periodic rate adjustment**
- 21 **mechanism allowed under subsection (a) for an electricity supplier**
- 22 **that the commission determines:**
- 23 **(1) is required to; and**
- 24 **(2) has failed to;**
- 25 **comply with section 5(b) or 5(c) of this chapter.**
- 26 **(c) If the commission revokes a periodic rate adjustment**
- 27 **mechanism allowed to an electricity supplier under subsection (b),**
- 28 **the electricity supplier may request, in the electricity supplier's**
- 29 **next general rate case, recovery of reasonable and necessary costs**
- 30 **incurred by the electricity supplier in attempting to comply with**
- 31 **section 5(b) or 5(c) of this chapter, as applicable.**
- 32 **Sec. 10. (a) For purposes of calculating RECs to determine an**
- 33 **electricity supplier's compliance with section 5(b) or 5(c) of this**
- 34 **chapter, as applicable, the following apply:**
- 35 **(1) Except as provided in subdivision (2), one (1) megawatt**
- 36 **hour of electricity generated from renewable energy resources**
- 37 **in an Indiana facility equals one and five-tenths (1.5) REC.**
- 38 **(2) One (1) megawatt hour of electricity generated from a**
- 39 **renewable energy resource described in section 4(a)(1) or**
- 40 **4(a)(2) of this chapter that originates in Indiana equals two (2)**
- 41 **RECs.**
- 42 **(3) One (1) megawatt hour of electricity that is:**
- 43 **(A) generated from a renewable energy resource that is**
- 44 **directly interconnected to a regional transmission**
- 45 **organization whose members include an electricity**
- 46 **supplier; and**
- 47 **(B) imported into Indiana;**

1 equals one (1) REC.

2 (b) An electricity supplier may not apportion all or part of a
3 single megawatt of electricity among more than one (1):

4 (1) renewable energy resource; or

5 (2) category set forth in subsection (a);

6 in order to comply with section 5(b) or 5(c) of this chapter, as
7 applicable.".

8 Page 10, delete lines 1 through 24.

9 Page 10, between lines 38 and 39, begin a new paragraph and insert:

10 "SECTION 19. IC 14-8-2-42.2 IS ADDED TO THE INDIANA
11 CODE AS A NEW SECTION TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2009]: Sec. 42.2. "Coal bed methane", for
13 purposes of this chapter, IC 14-37-3-14.5, and IC 14-37-11-3 means
14 gaseous substances of whatever character lying within or
15 emanating from:

16 (1) unmined coal seams, either naturally or as a result of
17 stimulation of the coal seam;

18 (2) the void created by mining out coal seams; or

19 (3) the gob created by longwall or other extraction methods of
20 coal mining.

21 SECTION 20. IC 14-8-2-47 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 47. (a) "Commercially
23 minable coal resource", for purposes of IC 14-37, means a seam of coal
24 that:

25 (1) can be mined using generally accepted underground
26 practices and suitable equipment; and

27 (2) consists of coal in sufficient quantities and of sufficient
28 quality to be commercially saleable.

29 (b) The term includes a seam of coal to which one (1) or more of
30 the following applies:

31 (1) The seam is:

32 (A) associated with an underground mine permitted under
33 IC 14-34; and

34 (B) specifically intended to be mined under the permit.

35 (2) The seam is associated with an inactive underground
36 mining operation at which mining operations:

37 (A) have temporarily ceased; and

38 (B) are anticipated to be resumed by the person with the
39 right to develop the seam.

40 (3) The seam is identified by a map as a commercially minable
41 coal resource by the owner or lessee of the seam in an
42 affidavit that:

43 (A) is filed with the division of reclamation under
44 IC 14-37-7-8; and

45 (B) states that the coal in the seam is being held for later
46 commercial production.

47 (4) The seam is:

(A) not a seam to which subdivision (1), (2), or (3) applies;
and

(B) verified by a professional geologist licensed under
IC 25-17.6 or a professional engineer licensed under
IC 25-31 to be:

- ~~(1)~~ (i) at least ~~thirty-six (36)~~ **thirty (30)** inches thick; and
- ~~(2)~~ (ii) located not more than ~~eight~~ **one thousand two**
hundred ~~(800)~~ **(1,200)** feet below the surface.

SECTION 21. IC 14-8-2-317 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 317. "Well for oil and
gas purposes", for purposes of IC 14-37, means a hole drilled,
deepened, or converted for any purpose for which a permit is required
under IC 14-37. The term includes the following:

- (1) An oil ~~or a natural gas~~ well.
- (2) A natural gas well.**
- (3) A coal bed methane well.**
- ~~(2)~~ **(4)** A Class II well.
- ~~(3)~~ **(5)** A structure test well.
- ~~(4)~~ **(6)** A well used for the sole purpose of supplying water for the
secondary recovery of petroleum resources.
- ~~(5)~~ **(7)** An underground gas storage well or underground gas
storage observation well.

SECTION 22. IC 14-37-1-5 IS ADDED TO THE INDIANA CODE
AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2009]: **Sec. 5. This article does not apply to methane ventilation
governed under an approved federal Mine Safety and Health
Administration coal mine ventilation plan.**

SECTION 23. IC 14-37-3-14.5 IS ADDED TO THE INDIANA
CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2009]: **Sec. 14.5. The commission shall:**

- (1) regulate coal bed methane wells and compliance with
IC 32-23-7-10 and IC 32-23-7-11; and**
- (2) establish alternative spacing, unit, and bonding
requirements for coal bed methane wells.**

SECTION 24. IC 14-37-4-1, AS AMENDED BY P.L.80-2005,
SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2009]: Sec. 1. A person may not drill, deepen, operate, or
convert a well for ~~oil and gas~~ purposes **of any of the following** without
a permit issued by the department:

- (1) Oil.**
- (2) Gas.**
- (3) Coal bed methane.**

SECTION 25. IC 14-37-4-8 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. **(a)** Except as
provided in section 9 of this chapter **and subject to subsection (b)**, if
an applicant for a permit complies with:

1 (1) this article; and
 2 (2) the rules adopted under this article;
 3 the commission shall issue a permit.

4 **(b) The division of oil and gas shall post on the web site**
 5 **maintained by the division of oil and gas each complete permit**
 6 **application under this chapter with respect to oil, gas, or coal bed**
 7 **methane. The posting must include at least the following:**

8 **(1) The location, type, and depth of each proposed well.**

9 **(2) The coal seam affected by each proposed coal bed methane**
 10 **well.**

11 **(c) The division of oil and gas may not issue a permit under this**
 12 **chapter less than fourteen (14) days after the posting of the permit**
 13 **application under subsection (b).**

14 SECTION 26. IC 14-37-7-4 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) If a well is drilled
 16 and completed as a producing well:

17 (1) through a commercially minable coal resource; ~~and or~~

18 (2) within an area:

19 **(A) for which a mine plan map is filed with the commission**
 20 **but under section 8 of this chapter; and**

21 **(B) for which an intermediate string is not required under**
 22 **section 3 of this chapter;**

23 an owner or operator shall set a production string of casing properly
 24 centralized and cemented and documented by a sonic cement
 25 bond-variable density log.

26 **(b) Before beginning logging operations under this section, an**
 27 **owner or operator must provide at least forty-eight (48) hours notice to**
 28 **the: all of the following:**

29 (1) The department. ~~and~~

30 (2) The person who filed the mine plan before commencing
 31 logging operations under this section: a map under subsection
 32 (a)(2).

33 (3) The owner or lessee of the commercially minable coal
 34 resource.

35 (4) Any person identified as either or both of the following:

36 **(A) The owner of the coal.**

37 **(B) An owner of coal in an area targeted for later**
 38 **commercial production under section 8 of this chapter.**

39 ~~The~~ **Each person who filed the mine plan entitled to notice**
 40 **under subsection (b)(2), (b)(3), or (b)(4) is entitled to:**

41 (1) be present during the logging operations; and

42 (2) examine the log.

43 (d) The commission shall determine the adequacy of cement
 44 bonding. If there is a bonding failure between fifty (50) feet below and
 45 one hundred (100) feet above the commercially minable coal resource,
 46 the owner or operator shall perform remedial action, as ordered by the

commission, that results in adequate bonding.

(e) Not later than thirty (30) days after commencing logging operations, the owner or operator shall provide **a copy of the sonic cement bond-variable density log to:**

(1) the department; and the

(2) **each person who filed the mine plan with a copy of the sonic cement bond-variable density log, entitled to notice under subsection (b)(2), (b)(3), or (b)(4).**

(f) Preparation of the log and any remedial action required under this section are at the expense of the owner or operator.

SECTION 27. IC 14-37-7-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8. (a) The owner or lessee of coal may file with the division of reclamation an affidavit identifying by map:**

(1) coal that the owner or lessee holds for later commercial production; or

(2) coal that is in an area targeted by the owner or lessee for later commercial production.

(b) All coal in an area designated under subsection (a) is considered a commercially minable coal resource.

(c) An affidavit referred to in subsection (a) may be made before applying for permits for the actual mining of the commercially minable coal resource. The division of reclamation shall:

(1) keep the affidavit and map confidential; and

(2) use the affidavit and map solely for determining if a commercially minable coal resource is present in an area for which a permit application has been filed under IC 14-37.

(d) Upon receipt of a permit application referred to in subsection (c)(2), the division shall request the division of reclamation to determine if the proposed well location is in an area underlain by coal identified in subsection (a).

(e) The division of reclamation shall report its determination under subsection (d) in writing to the division.

SECTION 28. IC 14-37-11-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3. The owner or operator of a coal mine may burn in flares the coal bed methane produced from a coal bed methane well if either or both of the following apply:**

(1) The burning is necessary to protect coal miners' safety.

(2) It is not economical to market the coal bed methane.

SECTION 29. IC 32-23-7-0.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 0.3. As used in this chapter, "coal bed methane" has the meaning set forth in IC 14-8-2-42.2.**

SECTION 30. IC 32-23-7-0.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2009]: **Sec. 0.4. (a) As used in this chapter, "coal bed methane estate in land" means the aggregate of all rights in land that affect the coal bed methane:**

- (1) in the land;**
- (2) on the land;**
- (3) under the land; or**
- (4) that may be taken from beneath the surface of the land.**

(b) The term includes the following:

- (1) The right to produce, sell, use, ventilate, waste, and otherwise affect coal bed methane in connection with coal mining or preparation for coal mining.**
- (2) The right to produce coal bed methane for commercial use or sale.**
- (3) The appurtenant right to use the surface overlying the coal bed methane for coal bed methane operations.**

SECTION 31. IC 32-23-7-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 0.5. (a) As used in this chapter, "coal bed methane production area" means the area of land determined by the operator in which multiple wells are drilled for a common production purpose.**

(b) A coal bed methane production area need not be part of a unit or other area in which production is pooled.

SECTION 32. IC 32-23-7-0.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 0.6. (a) As used in this chapter, "coal estate in land" means the total of all rights in land that affect the coal:**

- (1) in the land;**
- (2) on the land;**
- (3) under the land; or**
- (4) that may be taken from beneath the surface of the land.**

(b) The term includes the following:

- (1) The right to produce, sell, use, waste, and otherwise impact coal in connection with coal mining or preparation for coal mining.**
- (2) The right to produce coal for commercial use or sale.**
- (3) The appurtenant right to use the surface overlying the coal for coal operations.**

SECTION 33. IC 32-23-7-0.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 0.8. As used in this chapter, "commercially minable coal resource" has the meaning set forth in IC 14-8-2-47.**

SECTION 34. IC 32-23-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1. (a) As used in this chapter, "oil and gas" means petroleum and mineral oils and gaseous**

substances of whatever character naturally lying or found beneath the surface of land.

(b) The term does not include coal bed methane.

SECTION 35. IC 32-23-7-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 2.5. As used in this chapter, "operations for coal bed methane", unless otherwise indicated by the context of this chapter, means:**

(1) the exploration, surveying, or testing of land for coal bed methane;

(2) other investigation of the potential of land for coal bed methane production;

(3) the actual drilling or preparation for drilling of wells for coal bed methane;

(4) the stimulation of coal bed methane production by hydrofracturing or otherwise;

(5) the collection and transportation by pipeline of coal bed methane from:

(A) the land; or

(B) nearby land that is a part of a coal bed methane production area that includes the land; or

(6) any other actions directed toward the eventual production or attempted production of coal bed methane from the land.

SECTION 36. IC 32-23-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. (a) As used in this chapter, "person in interest" means:**

(1) if used in reference to an oil and gas estate in land, the owner of a beneficial interest in the oil and gas estate in land; or

(2) if used in reference to coal bed methane, the owner of a beneficial interest in the coal bed methane estate in land;

whether the interest is held for life, for a term of years, or in fee.

(b) The term includes a lessee, licensee, or duly qualified agent of the owner.

(c) The term does not include a mortgagee or security assignee of the owner if the mortgagee or security assignee does not have a right to the control or operation of the premises for:

(1) if used in reference to an oil and gas estate in land, oil and gas; or

(2) if used in reference to coal bed methane, coal bed methane.

SECTION 37. IC 32-23-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7. (a) ~~Interests in the oil and gas~~ This section applies to the following:**

(1) Interests in oil and gas.

(2) Interests in coal bed methane.

(b) An interest referred to in subsection (a) in, on, under, or that may be taken from beneath the surface of land located in Indiana may

- 1 be created:
- 2 (1) for life;
- 3 (2) for a term of years; or
- 4 (3) in fee;
- 5 in the manner and to the extent that other interests in real estate and
- 6 title are created.
- 7 ~~(b)~~ (c) Title to the estates specified under subsection ~~(a)~~ (b) may be
- 8 vested in one (1) or more persons by:
- 9 (1) sole ownership;
- 10 (2) tenancy in common;
- 11 (3) joint tenancy;
- 12 (4) tenancy by the entirety; or
- 13 (5) another manner recognized under Indiana law.
- 14 ~~(c)~~ (d) Interests or estates specified in this section are freely
- 15 alienable, in whole or in part, in the same manner as are other interests
- 16 in real estate.
- 17 SECTION 38. IC 32-23-7-8 IS AMENDED TO READ AS
- 18 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) This chapter does
- 19 not limit the rights of parties to contract with regard to ~~the~~ an oil and
- 20 gas estate affecting lands in Indiana:
- 21 (1) to the extent permitted by; and
- 22 (2) in a manner consistent with;
- 23 the nature of the estate in law as specified under this chapter.
- 24 (b) This chapter ~~is intended to declare~~ declares the law of ~~this the~~
- 25 state with regard to the ~~subject matter treated in this chapter~~ rights of
- 26 parties to contract concerning the oil and gas estate affecting lands
- 27 in Indiana as the law existed before March 5, 1951.
- 28 (c) This chapter does not affect the rights or powers of any
- 29 commission, board, or authority duly constituted for the regulation of
- 30 the oil and gas industry in Indiana.
- 31 SECTION 39. IC 32-23-7-9 IS ADDED TO THE INDIANA CODE
- 32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 33 1, 2009]: Sec. 9. (a) Except as provided in sections 10 and 11 of this
- 34 chapter, a grant or reservation contained in an instrument that
- 35 affects land in Indiana and that purports to convey or transfer an
- 36 interest in the coal or the coal bed methane in, on, under, or that
- 37 may be produced from beneath the surface of the land transfers
- 38 the following expressed rights and privileges in addition to any
- 39 other rights naturally flowing from the character of the instrument
- 40 in law to the named recipient:
- 41 (1) A person in interest in the coal bed methane in land may
- 42 enter the land for the purpose of:
- 43 (A) exploring, prospecting, testing, surveying, or otherwise
- 44 investigating the land to determine the potential of the land
- 45 for coal bed methane production; or
- 46 (B) otherwise conducting operations for coal bed methane

1 on the land;
2 whether or not the person is also the owner, lessee, or licensee
3 of an owner of an interest in the surface rights in the land.
4 (2) A person in interest in the coal bed methane estate in land
5 in Indiana may enter the land to drill a well or test a well on
6 the land for the production or attempted production of coal
7 bed methane regardless of whether the:
8 (A) person is also the owner, lessee, or licensee of an owner
9 of an interest in the surface rights in the land; and
10 (B) owner of the remaining rights in the land consents to
11 the entrance and drilling.
12 A person that drills a well under this subdivision shall provide
13 an accounting to the remaining or nonparticipating persons
14 in interest in the coal bed methane estate in the land, for their
15 respective proportionate shares of the net profits arising from
16 the operations conducted upon the land for coal bed methane.
17 In calculating the profits, a reduction may not be made from
18 the gross proceeds of the production of coal bed methane,
19 except for expenses that are reasonably or necessarily
20 incurred in connection with the drilling, completion,
21 equipping, and operation of the wells drilled upon the
22 premises during the period in which the relationship of
23 cotenancy existed between the person drilling the well and the
24 person whose interest is sought to be charged with the
25 respective proportionate part of the cost of the drilling.
26 (3) A person who may enter and enters land in Indiana for the
27 purpose of exploring, prospecting, testing, surveying, or
28 otherwise investigating the potential of the land for coal bed
29 methane, or for the purpose of conducting operations on the
30 land for the production of coal bed methane, is accountable
31 for the actual damage resulting from the person's activities on
32 the land to:
33 (A) the surface of the land;
34 (B) improvements to the land; or
35 (C) growing crops on the land.
36 However, a person who enters land under this subdivision is
37 not liable for punitive damages. This subdivision does not
38 increase damages between a lessor and a lessee in a valid and
39 subsisting coal bed methane lease that specifies damages if
40 damages are not due other than damages that are expressly
41 provided by contract between cotenants or the lessees of
42 cotenants of a like estate in the land. This section does not
43 authorize the location of a well for coal bed methane nearer
44 than two hundred (200) feet to an existing house, barn, or
45 other structure (except fences) without the express consent of
46 the owner of the structure.
47 (4) The right to conduct operations for coal bed methane upon

land located in Indiana includes the right to:

(A) install and maintain physical equipment on the land;
and

(B) use the part of the surface of the land that is reasonably
necessary for the operations for coal bed methane;

subject to the payment of damages resulting from the
installation only of the equipment specified in this subdivision.

(b) A conveyance, will, or other document that reserves or
excepts the coal or coal bed methane from the surface of the land
also excepts or reserves:

(1) the expressed rights and privileges set forth in subsection
(a)(1) through (a)(4); and

(2) any other rights naturally reserved or excepted from the
character of the instrument in law.

SECTION 40. IC 32-23-7-10 IS ADDED TO THE INDIANA
CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2009]: **Sec. 10. No surface right or any other
right pertaining to coal bed methane and naturally flowing from
the character of any instrument in law may be exercised if the
exercise of the right:**

(1) compromises in any way the safety of current miners of
coal; or

(2) has the potential to compromise in any way the safety of
miners who might mine coal in the future.

SECTION 41. IC 32-23-7-11 IS ADDED TO THE INDIANA
CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2009]: **Sec. 11. (a) If ownership of coal bed
methane is separate from ownership of coal, no surface right or
any other right pertaining to coal bed methane and naturally
flowing from the character of any instrument in law may be
exercised without the consent of the coal owner, a person who files
an affidavit with respect to a commercially minable coal resource
under IC 14-37-7-8, and the coal mine operator if exercising the
right:**

(1) results in; or

(2) has the potential to result in the future in;

any diminution of a commercially minable coal resource in
Indiana.

(b) For purposes of subsection (a), the use of any or a
combination of the following is presumed to be among the activities
that result in diminution of a commercially minable coal resource:

(1) Hydrofracturing the coal seam.

(2) Horizontal drilling in the coal seam.

(3) Any other technology that disturbs the integrity of either
or both of the following:

(A) The coal seam.

(B) The strata surrounding the coal seam.

(c) An application for a permit to drill into or through one (1) or more coal seams for the purpose of testing or producing coal bed methane must be accompanied by:

(1) certification by affidavit of the applicant that upon diligent inquiry, including reference to:

(A) the record of filings maintained by the department and made by coal owners and lessees under IC 14-8-2-47; and

(B) publicly available records pertaining to thickness and depth of coal;

the activities of the applicant do not and will not result in diminution of a commercially minable coal resource; or

(2) written consent of the coal owner or lessee authorizing the drilling.

(d) If the alternative in subsection (c)(1) is used by the applicant, an applicant who provides a certification under subsection (c)(1) must submit with the permit application proof that written notice of the permit application has been received by the owner and, if applicable, the lessee of the coal through which drilling is proposed.

(e) The owner and, if applicable, the lessee of the coal through which drilling is proposed may object to the issuance of the permit on the basis of diminution of a commercially minable coal resource.

(f) The department of natural resources shall prescribe by rule the procedure for objection under subsection (e), including a reasonable deadline for initiating the objection.

SECTION 42. IC 32-23-7-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 12. (a) This chapter does not limit the rights of parties to contract with regard to a coal bed methane estate in land affecting lands in Indiana:**

(1) to the extent permitted by; and

(2) in a manner consistent with;

the nature of the estate in law as specified under this chapter.

(b) Subject to subsection (c), this chapter declares the law of the state with regard to the rights of parties to contract concerning a coal bed methane estate in land affecting lands in Indiana after June 30, 2009.

(c) If it is judicially determined that the law that applies before July 1, 2009, differs from the law declared under subsection (b) to apply after June 30, 2009, the determination does not diminish or otherwise affect the application after June 30, 2009, of the law declared under subsection (b) to apply after June 30, 2009.

(d) This chapter does not affect the rights or powers of any commission, board, or authority constituted to regulate the coal bed methane industry in Indiana.

(e) The natural resources commission shall adopt rules under IC 4-22-2 to regulate coal bed methane production in accordance

1 with sections 10 and 11 of this chapter.

2 SECTION 43. IC 32-23-7-13 IS ADDED TO THE INDIANA
3 CODE AS A NEW SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2009]: Sec. 13. (a) Except as provided in
5 subsection (b), an instrument executed after June 30, 2009, that:

6 (1) affects land in Indiana; and

7 (2) is a grant, exception, or reservation of rights to coal;
8 must include the coal bed methane estate in land.

9 (b) In an instrument executed after June 30, 2009, the coal bed
10 methane estate in land may be separated from the coal estate in
11 land by express provisions identifying the coal bed methane estate
12 in land as separate from the coal estate in land.

13 (c) An instrument executed after June 30, 2009, that:

14 (1) affects land in Indiana; and

15 (2) is a grant, exception, or reservation of rights to:

16 (A) oil and gas; or

17 (B) gas;

18 may not include the coal bed methane estate in land.

19 SECTION 44. [EFFECTIVE UPON PASSAGE] (a) As used in this
20 SECTION, "commission" refers to the Indiana utility regulatory
21 commission created by IC 8-1-1-2.

22 (b) Subject to subsections (c) and (d) and not later than July 1,
23 2009, the commission shall adopt rules to amend the net metering
24 and interconnection rules adopted by the commission and codified
25 at 170 IAC 4-4.2. The commission shall adopt the rules required by
26 this subsection in the same manner as emergency rules are adopted
27 under IC 4-22-2-37.1. The rules adopted by the commission under
28 this subsection must do the following:

29 (1) Require an electric utility to offer net metering to at least
30 the following customer classes:

31 (A) Residential customers.

32 (B) Commercial customers.

33 (C) Industrial customers.

34 (D) Agricultural customers.

35 (E) Local governments.

36 (F) The state.

37 (G) Kindergarten through grade 12 schools.

38 (H) Postsecondary educational institutions (as described in
39 IC 6-3-3-5).

40 (2) Allow a net metering customer to interconnect a
41 generating facility with a nameplate capacity of one (1)
42 megawatt or less to a distribution facility of an electric utility.

43 (3) Allow a net metering customer to interconnect a facility
44 that generates electricity through any of the following
45 technologies:

46 (A) Solar.

47 (B) Wind.

- 1 (C) Microhydroelectrical facilities.
- 2 (D) Microturbines using renewable fuels.
- 3 (E) Fuel cells using renewable fuels.
- 4 (F) Biogas, including anaerobic digestion.
- 5 (G) Methane gas from landfills.
- 6 (c) Rules adopted under subsection (b) expire on:
 - 7 (1) the date the commission adopts rules under IC 4-22-2-24
 - 8 through IC 4-22-2-36; or
 - 9 (2) January 1, 2011;
- 10 whichever is earlier.
- 11 (d) Not later than June 1, 2009, the commission shall evaluate

12 the net metering and interconnection rules adopted by the

13 commission and codified at 170 IAC 4-4.2 for compliance with the

14 requirements set forth in subsection (b). To the extent that any

15 rules codified at 170 IAC 4-4.2 do not meet the requirements set

16 forth in subsection (b), the rules are void. Not later than June 15,

17 2009, the commission shall notify the publisher of the Indiana

18 Administrative Code and Indiana Register of any rules codified at

19 170 IAC 4-4.2 that are void under this subsection. The publisher

20 shall remove the rules that are void under this subsection from the

21 Indiana Administrative Code.
- 22 (e) Not later than November 1, 2009, the commission shall

23 report to the regulatory flexibility committee established by

24 IC 8-1-2.6-4 on the commission's progress under subsection (c)(1)

25 in finally adopting, under IC 4-22-2-24 through IC 4-22-2-36, the

26 emergency rules initially adopted by the commission under

27 subsection (b).
- 28 (f) For purposes of subsection (b)(1), "electric utility" does not

29 include the following:

 - 30 (1) A corporation organized under IC 8-1-13.
 - 31 (2) A corporation organized under IC 23-17-1 that is an
 - 32 electric cooperative and that has at least one (1) member that
 - 33 is a corporation organized under IC 8-1-13.
- 34 (g) This SECTION expires January 1, 2011."

35 Renumber all SECTIONS consecutively.

(Reference is to ESB 420 as printed April 10, 2009.)

Representative Koch